

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION
TECHNICAL CONFERENCE
ON PUBLIC UTILITY HOLDING COMPANY ACT OF 2005 AND
FEDERAL POWER ACT SECTION 203 ISSUES**

**WRITTEN STATEMENT OF ROBERT GARVIN
COMMISSIONER
PUBLIC SERVICE COMMISSION OF WISCONSIN
DECEMBER 7, 2006**

Thank you for the opportunity to participate in today's technical conference. My name is Robert Garvin. I am a Commissioner serving on the Wisconsin Public Service Commission (PSCW). The views set forth in this statement are my own and may not necessarily reflect the views of my fellow colleagues on the PSCW.

The broad scope of the questions at today's technical conference reflects the broad and *shared* concern the FERC, state regulators, the consumers we serve and the companies we regulate have relating to the development of policies to safeguard against the cross-subsidization of non-utility affiliate companies by a utility affiliate within a utility holding company structure.

I want to first commend the Federal Energy Regulatory Commission (FERC) for continuing its efforts to solicit public advice

from stakeholders in order to see if any additional safeguards are necessary under section 203 of the Federal Power Act.

The repeal of PUHCA last year was intended to end many of the purported restrictions imposed by federal law on investment diversification by utility holding companies. The careful balancing act that federal and state regulators must now conduct during this transition period is to ensure that we fulfill our statutory obligation to the consumers we serve with the corresponding duty not to take regulatory actions that would conflict with the legislative intent behind the law's repeal--fostering a regulatory environment that attracts the necessary capital to invest in our country's energy infrastructure.

A principal reason, in my view, for the FERC to exercise caution before promulgating supplemental regulations from those set forth in Docket RM05-32-001 is that state public utility commissions are actively and independently carrying out their statutory responsibilities to protect consumers from the adverse impacts of subsidization by public utility affiliates within a holding company organization on a case-by-case basis. One need only look at the ongoing regulatory proceedings in

Kansas¹ and New Jersey² as the most recent examples—post PUHCA repeal—of state public utility commissions who are actively examining the books and records of the utility affiliates and non-utility affiliates ; proposing regulatory safeguards that ensure that the customers of those public utility affiliates are not subsidizing non-utility affiliates; and protecting the credit quality of the utilities it regulates.

I would concur with those parties who take the position that supplemental federal regulations may be required if a demonstrable gap exists between federal and state regulations of utility affiliates within a holding company structure. The adoption of a blanket federal rule presumes regulatory failure on the part of state regulators to protect consumers in our respective states, one that simply does not exist. For this reason, I do not believe that the FERC’s adoption of generic federal “ring fencing” provisions under Section 203 of the Federal Power Act is warranted at this time.

The authority to review proposed mergers/corporate dispositions involving public utilities, to impose cross-subsidization safeguards as a condition of approval, and to have rate related authorities to protect

¹ Report and Recommendation of the Staff of the State Corporation Commission of Kansas, Docket No. GMIX-181-GIV, January 13, 2006.

² Energy Competition Standards, Public Utility Holding Company Standards, Proposed New Rules, Docket No. AX05070641, December 19, 2005, 37 N.J.R. 4889.

customers against inappropriate cross-subsidization, varies from state to state. In Wisconsin, we already have the specific cross-subsidization safeguards that demonstrate why it is not necessary for the FERC to adopt specific generic safeguards.

To protect against cross-subsidization, Wisconsin has generally adopted a three-prong approach under state law: (1) imposing restrictions, (2) implementing reporting requirements, and (3) conducting compliance audits of holding company transactions and operations. In orders approving the formation of energy holding companies, the Wisconsin Commission has imposed annual reporting requirements. In addition, orders approving affiliated interest agreements many times include annual or periodic reporting requirements. The utility annual report to the Wisconsin Commission also includes reporting of affiliated transactions.

The Wisconsin Public Utility Holding Company Act (WPUCHA), as set forth in Wis. Stat. § 196.795, is an example of a statutory “ring fencing” regime that has successfully protected captive Wisconsin consumers from holding company abuses for over 20 years.

The following are some of the statutory safeguards that are in place in Wisconsin:

- **If the commission finds that the capital of a public utility is impaired, it may order the public utility to cease paying dividends until the impairment is removed. (Wis. Stat. § 201.11)**
- **Prior approval of affiliated interest agreements. (Wis. Stat. § 196.52)**
- **Authority to approve mergers and corporate reorganizations involving energy public utilities. (Wis. Stat. §§ 196.79 and 196.80)**
- **Authority to approve the formation of energy holding companies which includes, but is not limited to, the following safeguards:**

--The commission has full access to records of the holding company system that are relevant to the performance of the commission's duties.

--No public utility affiliate may lend money to any holding company which is not a public utility or to any non-utility affiliate.

--No public utility affiliate may guarantee the obligations of any non-utility affiliate.

--No public utility may materially subsidize non-utility activities of the holding company or any of its non-utility affiliates.

--No holding company system may be operated in any way which materially impairs the credit of the public utility or which impairs the ability of the public utility to provide adequate utility service.

--No public utility affiliate employees or resources may be used by an affiliate without prior commission approval. A public utility is to receive fair market value for services provided.

--In general, the sum of the assets of all non-utility affiliates in a holding company may not exceed 25 percent of the assets of all public utility affiliates in the holding company system engaged in the generation, transmission or distribution of electric power.³

I would also note that current state law also provides that at least once every 3 years, the PSCW shall investigate the impact of the operation of every holding company system on every public utility affiliate in the holding company system and shall determine whether each non-utility affiliate, does, or can reasonably be expected to do, at least one of the following:

- Substantially retain, attract or promote business activity or employment within the state.**
- Increase or promote energy conservation or renewable energy products or equipment.**

³ 1999 Act 9 substantially relaxed the 25% cap by excluding a variety of non-utility affiliate investments from inclusion in either the numerator/denominator in the asset cap calculation. Under state law, the “eligible assets” of a non-utility affiliate in the holding company system are excluded from both the sum of the assets of the public utility affiliates and of the non-utility affiliates in the asset cap formula. An “eligible asset” is an asset of a non-utility affiliate that is used for any of the following:

- (1) Producing, generating, transferring, delivering, selling or furnishing gas, oil, electricity or steam energy.
- (2) Providing an energy management, conservation or efficiency product or service or a demand-side management product or service.
- (3) Providing an energy customer service, including metering or billing.
- (4) Recovering or producing energy from waste materials.
- (5) Processing waste materials.
- (6) Manufacturing, distributing or selling products for filtration, pumping water or other fluids, processing or heating water, handling fluids or other related activities.
- (7) Providing a telecommunication service.
- (8) Providing an environmental engineering service.

- **Conduct a business functionally related to utility service or to the development of energy resources.**
- **Develop or operate commercial or industrial parks⁴.**

As can be seen from this list, the Wisconsin Commission already has sufficient regulatory authority to protect against cross-subsidization. In my view, developing generic safeguards and reporting requirements may be difficult to accomplish. I would respectfully suggest that it may be more productive for the FERC to implement any additional safeguards and reporting requirements on a case-by-case basis. While the appropriateness of generic action by the FERC depends on state law, I remain concerned that any future FERC action would have the practical effect of pre-empting the states.

In summary, I believe that the adoption of generally applicable federal regulations—rather than imposing safeguards on a case-by-case basis--less than one year after PUHCA's repeal: (1) wrongly assumes regulatory failure on behalf of states to aggressively tackle thorny cross-subsidy issues; (2) may have the unintended effect of adding additional regulatory uncertainty at a time when regulators, utilities and consumers need to work together to find innovative ways to attract the necessary capital needed to address the underinvestment in

⁴ Wis. Stat. § 196.795(7)(a)1. to 4.

**transmission facilities and base load generation facilities in our country;
and (3) may have the practical effect of appearing to preempt state
regulatory authorities.**

**I appreciate the opportunity to participate in this important
dialogue in order to provide some clarity in our mutual efforts to
protect wholesale customers and retail customers from affiliate abuse.**

**Thank you for giving me the opportunity to testify this morning
and I look forward to responding to any questions.**